

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

v.

TIDEWATER EQUIPMENT  
COMPANY and MID-STATE  
FORESTRY EQUIPMENT, LLC,

Defendants.

FILED  
SCRANTON

MAR 25 2022

PER

DEPUTY CLERK

3:21-CV-551

(JUDGE MARIANI)

(Magistrate Judge Carlson)

ORDER

AND NOW, THIS 24<sup>th</sup> DAY OF MARCH 2022, upon consideration of Magistrate

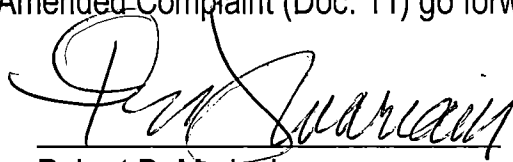
Judge Carlson's Report and Recommendation ("R&R") (Doc. 31) for clear error or manifest  
injustice, **IT IS HEREBY ORDERD THAT:**

1. Magistrate Judge Carlson's Report and Recommendation (Doc. 31) is **ADOPTED** for  
the reasons set forth therein;<sup>1</sup>
2. Defendant Mid-State's Motion to Dismiss (Doc. 12) is **GRANTED** with the result that  
Counts I, III, and IV of Plaintiff's Amended Complaint (Doc. 11) are **DISMISSED**;

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<sup>1</sup> The Court notes that the R&R's analysis of the economic loss doctrine relies in part on *Werwinski v. Ford Motor Company*, 286 F.3d 661 (3d Cir. 2002). (See Doc. 31 at 11, 20.) *Werwinski* held in part that the economic loss doctrine applies to UTPCPL claims. 286 F.3d at 670-682. This holding was abrogated by *Earl v. NVR, Inc.*, 990 F.3d 310, 314 (recognizing the tension between *Werwinski* and the Pennsylvania Superior Court's decision in *Knight v. Springfield Hyundai*, 81 A.3d 940 (Pa. Super. Ct. 2013)). Because this case does not involve UTPCPL claims, the abrogation of *Werwinski* as to the economic loss doctrine's applicability to UTPCPL claims does not affect the R&R's reliance on *Werwinski* as to the economic loss doctrine's applicability to tort claims.

3. Defendant Tidewater's Motion to Dismiss (Doc. 14) is **DENIED**;
4. Counts II, V, and VI of Plaintiff's Amended Complaint (Doc. 11) go forward.

A handwritten signature in black ink, appearing to read "R. Mariani", written over a horizontal line.

Robert D. Mariani  
United States District Judge